IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.449 OF 2005
IN
SUMMARY SUIT NO.1273 OF 2005

Ajay Navinchandra Gogri ....Plaintiff
V/s.
M/s.Shah Hansraj Vajpar & Sons & Ors. ....Defendants

Mr.L.H. Rambhia for the Plaintiff.

Mr.Kamal Khatka with Mr.H.V. Chande for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 21ST AUGUST, 2007.

P.C. :

1. The suit is filed to recover a sum of Rs.4,68,948=75 ps. with interest at 18% p.a.

2. The suit is filed on a balance confirmation letter dated 31.3.2002. There is no dispute that the same was executed by the Defendants.

3. There is no dispute that the Plaintiff had lent and advanced a sum of Rs.4,22,000/- to the Defendants in 1992. There is no dispute that interest was paid by the Defendants to the Plaintiff from time to time and that T.D.S. certificates for the same

were also issued. There is no dispute that balance confirmation letters dated 31.3.1998 and 31.3.1999 were also executed by the Defendants.

4. The defence on merits is that the balance confirmation letters were issued at the instance of an advocate of this Court, who was settling another dispute between the parties pertaining to a godown. The learned advocate has filed an affidavit at the Defendants' request. In fact the affidavit does not help the Defendants at all. The learned advocate has very fairly stated that he persuaded the Defendants to issue the balance confirmation letters, as the Plaintiff had requested for the same from the Defendants on account of certain past accounts. The learned advocate does not state that the amounts were not due and payable by the Defendants to the Plaintiff. He merely persuaded the Defendants to do what they ought to have done in any event. Further it is clear that the disputes regarding the godown and the suit itself are not connected. It is not even the Defendants' case that the godown was handed over to the Plaintiff thereby extinguishing the suit liabilities.

5. Thus the loan is admitted. It is also

admitted that the same has not been repaid. The execution of the balance confirmation letters is admitted. That they were executed at the suggestion of the Defendants' advocate is of no relevance. There is therefore no defence on merits.

6. The Defendants then contended that the suit is barred in view of the Bombay Money Lenders Act. The Defendants submit that the Plaintiff had also advanced moneys to other parties. The averments are not sufficient to bar the suit under the said Act. The amounts were advanced to sister concerns. There is nothing to establish that the Plaintiff carried on the business of money lending. In any event there is nothing to indicate that the loans were given contrary to the provisions of the Bombay Money Lenders Act.

7. There is no defence to the suit at all.

8. In the circumstances, the Summons for Judgment is made absolute and the suit is decree as prayed.

Refund as per rules.